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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 RUFINA HILARIO GARCIA, individually ) Case No.: 1:20-cv-0093-NONE- JLT  
12 and on behalf of Ce. H.G., M.H.G., P.H.G. , )  
13 Ca.H.G., and O.H.G., minors, being the heirs ) ORDER GRANTING PLAINTIFFS' MOTION TO  
14 of and successors-in-interest to SANTO ) APPOINT RUFINA HILARIO GARCIA AS THE  
15 HILARIO GARCIA and MARCELINA ) GUARDIAN AD LITEM FOR MINOR  
16 GARCIA PROPECTO, ) PLAINTIFFS Ce. H.G., M.H.G., P.H.G., Ca.H.G.,  
17 ) and O.H.G.  
18 Plaintiffs, )  
19 v. ) (Doc. 18)  
20 UNITED STATES OF AMERICA, )  
21 Defendant. )  
22

23 Plaintiffs are the children of Santo Hiario Garcia and Marcelina Garcia Profecto, and assert the  
24 Government is liable for the wrongful deaths of their parents following a high-speed vehicle chase by  
25 the United States Department of Homeland Security and its Immigration and Customs Enforcement  
26 Agency. (*See generally* Doc. 1) Rufina Hilario Garcia seeks appointment as the guardian ad litem for  
27 her minor siblings, Ce.H.G., M.H.G., P.H.G., Ca.H.G., and O.H.G. (Doc. 28) but Ms. Garcia has not  
28 requested appointment. For the reasons set forth below, the request is **GRANTED**.

29 **I. Appointment of a Guardian Ad Litem**

30 Pursuant to the Federal Rules of Civil Procedure, “[a] minor . . . who does not have a duly  
31 appointed representative may sue by a next friend or by a guardian ad litem.” Fed. R. Civ. P. 17(c)(2).  
32 In addition, a court “must appoint a guardian ad litem - or issue another appropriate order - to protect a

1 minor or incompetent person who is unrepresented in an action.” *Id.* The capacity of an individual to  
2 sue is determined “by the law of the individual’s domicile.” Fed. R. Civ. P. 17(b). Here, Plaintiffs  
3 reside in Kern County, California (*See* Doc. 1 at 2), and the law of the state governs.

4 Under California law, an individual under the age of eighteen is a minor, and a minor may bring  
5 suit as long as a guardian conducts the proceedings. Cal. Fam. Code §§ 6502, 6601. A guardian ad  
6 litem may be appointed to represent the minor’s interests. Cal. Code Civ. P. § 372(a). To evaluate  
7 whether to appoint a particular guardian ad litem, the Court must consider whether the minors and the  
8 proposed guardian have divergent interests. Cal. Code Civ. P. § 372(b)(1). “When there is a potential  
9 conflict between a perceived parental responsibility and an obligation to assist the court in achieving a  
10 just and speedy determination of the action, a court has the right to select a guardian ad litem who  
11 ...would best protect the child’s interests.” *Williams v. Super. Ct.*, 147 Cal. App. 4th 36, 38 (Cal. Ct.  
12 App. 4th 2007) (internal quotation marks and citation omitted). If a guardian “has an actual or potential  
13 conflict of interest with [the] child,” the individual “has no right to control or influence the child's  
14 litigation.” *Id.* at 50.

## 15 **II. Discussion and Analysis**

16 Plaintiffs, including Ms. Garcia, assert the Government is liable for the wrongful deaths of their  
17 parents following a high-speed vehicle chase. Because plaintiffs Ce. H.G., M.H.G., P.H.G., Ca.H.G.,  
18 and O.H.G. are minors under California law, they are unable to prosecute the claims presented in the  
19 complaint without the appointment of a guardian ad litem. *See* Cal. Fam. Code § 6502.

20 Upon review of the Complaint, it does not appear there are adverse interests, because the claims  
21 of Ms. Garcia are the same as those of her minor siblings. Further, Plaintiffs report that the Superior  
22 Court of California, County of Kern, appointed Ms. Garcia as the guardian for her siblings following  
23 the death of their parents, in Case No. BPB-18-002494. (Doc. 18 at 2, ¶ 2) Accordingly, the Court  
24 finds appointment of Ms. Garcia as guardian ad litem for her siblings is appropriate. *See Burke v.*  
25 *Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001) (“Generally, when a minor is represented by a guardian  
26 who is a party to the lawsuit and who has the same interests as the child, there is no inherent conflict of  
27 interest.”); *see also Anthem Life Ins. Co. v. Olguin*, 2007 U.S. Dist. LEXIS 37669, at \*7 (E.D. Cal. May  
28 9, 2007) (observing a parent or guardian “is generally appointed guardian ad litem”).

1 **III. Conclusion and Order**

2 The decision whether to appoint a guardian ad litem is “normally left to the sound discretion of  
3 the trial court.” *United States v. 30.64 Acres of Land, etc.*, 795 F.2d 796, 804 (9th Cir. 1986). Here, it  
4 does not appear Ms. Garcia has conflicting interests with those of Ce.H.G., M.H.G., P.H.G., Ca.H.G.,  
5 and O.H.G, and as such she may be appointed to represent their interests. Therefore, the Court is acting  
6 within its discretion to grant Plaintiffs’ motion for appointment of Ms. Garcia as the guardian ad litem.  
7 Based upon the foregoing, the Court **ORDERS**:

- 8 1. The motion for appointment of Rufina Hilario Garcia as guardian ad litem for Ce.H.G.,  
9 M.H.G., P.H.G., Ca.H.G., and O.H.G (Doc. 18) is **GRANTED**; and  
10 2. Rufina Hilario Garcia is appointed to act as guardian ad litem for plaintiffs Ce.H.G.,  
11 M.H.G., P.H.G., Ca.H.G., and O.H.G, and is authorized to prosecute this action on their  
12 behalf.

13  
14 IT IS SO ORDERED.

15 Dated: **February 20, 2020**

**/s/ Jennifer L. Thurston**  
UNITED STATES MAGISTRATE JUDGE